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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

14 MARTHA ZEPEDA OLIVARES,
15 individually and on behalf of the
16 ESTATE OF MAXIMILIANO SOSA,
JR.; MAXIMILIANO SOSA, SR,

17 Plaintiffs,

18 v.

19 CITY OF FRESNO; UNKNOWN
20 LAW ENFORCEMENT OFFICERS,
21 POLICE CHIEF PACO
BALDERRAMA and DOES 1-30,

22 Defendants.

Case No. 1:23-cv-01575-JLT-SAB
Dist. Court Judge Jennifer L. Thurston
Magistrate Judge Barbara A. McAuliffe

REPLY TO PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PORTIONS
OF PLAINTIFFS' FIRST
AMENDED COMPLAINT

Hearing Date: Vacated
Time: N/A
Courtroom: 4

Action Filed: 02/23/2024
Trial Date: Not Yet Set

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Defendants CITY OF FRESNO, UNKNOWN LAW ENFORCEMENT OFFICERS, and FORMER POLICE CHIEF PACO BALDERRAMA (collectively “defendants”) submit the following Reply To Plaintiff’s Opposition to Defendants’ Motion to Dismiss Portions of Plaintiff’s First Amended Complaint [Doc. 42].

DATED: September 30, 2024

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

By: /s/ Mildred K. O’Linn

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Attorneys for Defendants, CITY OF

FRESNO; UNKNOWN LAW

ENFORCEMENT OFFICERS, and

POLICE CHIEF PACO BALDERRAMA

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiff's Opposition to Defendants' Motion to Dismiss Portions of Plaintiff's First Amended Complaint ("Opposition") points out that the federal system is one of notice pleading and that the pleading must give the defendant fair notice of what plaintiff's claim is and the grounds upon which it rests. [*See generally*, Doc. 42.]

However, Plaintiff's FAC fails to state the grounds on which the fifth cause of Action, the Americans with Disability Act ("ADA") claim, is based. The Complaint fails to state any facts (other than a vague reference to emotional distress) that could state an ADA claim.

Defendants' Motion to Dismiss Portions of Plaintiff's FAC should be granted. Specifically, Defendants move to dismiss Plaintiff's fifth cause of action. Additionally, Defendants request that the above-referenced improperly plead portions of Plaintiff's FAC be dismissed without leave to amend as the above-referenced portions of Plaintiff's FAC cannot be cured through amendment.

II. THE COMPLAINT FAILS TO ALLEGE THAT MR. SOSA HAD A QUALIFYING DISABILITY, HAD A RECORD OF SUCH A DISABILITY OR THAT HIS DISABILITY SUBSTANTIALLY LIMITED ONE OR MORE MAJOR LIFE ACTIVITIES.

Plaintiffs' opposition fails to address how Mr. Sosa was an individual with a qualifying disability or that he had a record of such a disability. Even assuming that Mr. Sosa's emotional distress the evening of the incident is sufficient to qualify as a disability, the allegations of the complaint do not support that the Mr. Sosa's illness substantially limited one or more of the major life activities. *See* 42 U.S.C. § 12102(1)(A). The term "substantially limits" has been defined as the inability "to perform a major life activity that the average person in the general population can perform," or being "[s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity" as compared

1 to the average person. *EEOC v. United Parcel Serv., Inc.*, 306 F.3d 794, 801 (9th
 2 Cir. 2002) (citing 29 C.F.R. § 1630.2(j)(1)(i)-(ii)). Although the definition of
 3 disability is to be broadly construed, plaintiff must still aver plausible facts showing
 4 that the Mr. Sosa’s mental illness limited one or more major life activities. Where,
 5 as here, the allegations “do not illuminate the nature, severity, duration and impact
 6 of [the plaintiff’s] disability,” such allegations are insufficient to “suggest that [the
 7 plaintiff] is substantially impaired by [the] purported disability.” *Rodriguez v. John*
 8 *Muir Med. Ctr.*, 2010 U.S. Dist. LEXIS 25589, 2010 WL 10, at 2 (N.D. Cal. Mar.
 9 18, 2010).

10 The allegations in the complaint do not indicate any substantial limitation in
 11 any life activity. There is no “depth and detail on the magnitude of the Decedent’s
 12 limitations.” To allege a record of physical or mental impairment, a plaintiff must
 13 allege with at least some factual detail what the record of impairment is. *Klamut v.*
 14 *Cal. Highway Patrol*, 2015 U.S. Dist. LEXIS 169074, 23 (N.D. Cal. Dec. 16, 2015).
 15 The complaint fails to allege that Mr. Sosa had any record of such impairment or that
 16 anyone regarded him as having such an impairment. In fact, the complaint seems to
 17 indicate that the emotional distress Mr. Sosa experienced was limited to the evening
 18 of the incident. [Doc. 42, 4:8-12; *see also* FAC, ¶ 11.] The complaint states no facts
 19 that Mr. Sosa had a record of emotional distress, was regarded as having emotional
 20 distress or limited any life activities and as such does not state a claim under the ADA.
 21 *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

22 **III. PLAINTIFF FAILED TO PLEAD FACTS THAT THE ALLEGED** 23 **CONDUCT WAS BY REASON OF DECEDENT’S DISABILITY.**

24 By failing to plead any substantial impairment of a major life activity there is
 25 no causal link between the Mr. Sosa’s emotional distress and the officer’s conduct.
 26 Plaintiff’s opposition does not address how Mr. Sosa’s known disability was a
 27 motivating factor in the non-accommodation of the seizure.

28 It is not enough to merely allege that the officers had been told the subject was

1 “mentally ill.” In *Klamut*, the allegation was that plaintiff’s mother, a pediatrician,
2 told officers her son suffered from “mental illness.” 2015 U.S. Dist. LEXIS 169074,
3 at 2. The allegation was found insufficient to state an ADA claim. *Id.* at 19-20. Here,
4 plaintiff pleads no allegations that the officers were informed of Mr. Sosa’s emotional
5 distress.

6 Second, as stated in defendants’ motion to dismiss, the allegations do not claim
7 that the officers actually knew that a disability was involved such that his disability
8 was a motivating factor in the officer’s decisions. *See, e.g., Castillo v. Klitch*, 2016
9 U.S. Dist. LEXIS 110366, 9 (D.C. Idaho Aug. 17, 2016) (Obsessive Compulsive
10 Disorder (OCD) was not the type of disorder an officer can easily understand or
11 recognize); *Avila v. City of Visalia*, 2010 U.S. Dist. LEXIS 115935, 8 (E.D. Cal. Nov.
12 1, 2010) (although the FAC alleged that Plaintiff told “Defendants, or some of them”
13 that she had Parkinson’s Disease, the FAC did not indicate which of the Defendants
14 were purportedly aware of Plaintiff’s disease or which Defendants failed to consider
15 that disease in deciding to arrest Plaintiff).

16 Finally, there is no direct causal link between the failure to accommodate and
17 a nebulous disability. The allegations do not support a link that the officer responded
18 to the disability inappropriately, especially where there are no allegations as to how
19 the disability manifested itself in an individual like Mr. Sosa who would appear to be
20 moderate to high functioning.

21 **IV. CONCLUSION**

22 Accordingly, the Court should grant Defendants’ Motion to Dismiss Portions
23 of Plaintiffs’ First Amended Complaint.
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1 DATED: September 30, 2024

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